

BEFORE THE NATIONAL LABOR RELATIONS BOARD  
UNITED STATES OF AMERICA  
REGION 19

TOWN & COUNTRY CHRYSLER  
PLYMOUTH, INC.

Employer

and

Case 36-RC-6144

INTERNATIONAL ASSOCIATION OF MACHINISTS  
& AEROSPACE WORKERS, AFL-CIO,  
DISTRICT LODGE NO. 24

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned makes the following findings and conclusions:

**SUMMARY**

On June 6, 2002, the Petitioner filed the instant petition seeking to represent a unit of all full time and regular part time repair technicians at Town & Country Chrysler. The Employer contends that the appropriate unit should also include repair technicians who work at its Mitsubishi department<sup>1</sup> as well. This was the sole issue in the hearing. There is no history of collective bargaining.

I conclude that the Mitsubishi technicians share such a strong community of interest with the Chrysler technicians and that they must be included in the petitioned for unit.<sup>2</sup> Therefore, the following constitutes an appropriate unit:<sup>3</sup>

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<sup>1</sup> I will use the terms "division, department, section, group, shop" herein, however interchangeably to refer to the two separate service groupings at the facility.

<sup>2</sup> The "geographic scope" of the Unit -- both service departments, or one -- was not agreed upon. Otherwise, the Unit is in accord with the stipulations of the Petition

<sup>3</sup> The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. The labor organization involved claims to represent certain employees of the Employer. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and section 2(6) and (7) of the Act.

All full-time and regular part-time repair technicians employed by the Employer at the Milwaukie, Oregon facility; excluding office clerical employees, professional employees, managerial employees, service writers, parts department employees, guards and supervisors as defined by the Act, and all other employees.

## **BACKGROUND**

As noted above, the Employer, a corporation, operates (an) automobile dealership(s) located at 16800 S.E. McLoughlin Blvd.<sup>4</sup> in Milwaukie, Oregon under the Town & Country logo. It sells five brands of vehicles at that site using of three showrooms. The instant dealership sells and services new and used vehicles, and sells parts and accessories. It is also engaged in the business of purchasing used vehicles, which are prepared for later resale. The dealership is divided into two major service divisions, Chrysler and Mitsubishi. The record shows that the Chrysler division services Chrysler, Jeep and Isuzu vehicles, while the Mitsubishi division services Mitsubishi and Daewoos. Ralph Martinez and Carlos Martinez own the dealership.

The facility is a single, C-shaped building with car showrooms and sales facilities on the front west side, and two service areas in the rear. A north - south corridor connects these showrooms. The Isuzu showroom, located in the center of the building, showcases Isuzu and Daewoo vehicles. Directly behind the Isuzu showroom is the sales office, which is responsible for approving the sale and financing for all five brands. The Chrysler showroom, located on the north corridor, displays Chrysler and Jeep vehicles. The service area for the Chrysler, Isuzu and Jeep vehicles is located behind the Chrysler showroom. The Mitsubishi showroom, located on the south corridor, houses Mitsubishi vehicles. The service area for Mitsubishi and Daewoos is located behind the Mitsubishi showroom. The two service areas are separated by an approximately 100 - 200 foot wide common area. Each shop has its own parts department. No one contends any unit should include any parts employees.

Carlos Martinez serves as the Employer's general manager and is in charge of operating the dealership. Managers' meetings are held every two weeks and are attended by staff managers from each department, including sales, used cars, service, business and parts. Administrative functions are centralized. Christine Welsh is the Human Resources administrator; among her many functions are counseling and disciplining of employees, processing job applications, running advertisements for job openings and counseling and administering employee benefits. Mary Schnell handles employee payroll. Accounting is similarly centralized. All employees receive the same benefits, including 401(k), medical, dental and vision insurance.

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<sup>4</sup>. Although the facility has two street addresses, it is due to the fact that they were once separate buildings, which were joined later into a single facility. For purposes of this record, I find that the proper address is reflected in the business records that were submitted by the Employer. According to those documents, the Oregon Secretary of State issued a business license to the Employer at 16800 S.E. McLouglin Blvd., under the assumed business name of Town & Country Chrysler, Jeep, Mitsubishi, Isuzu, Daewoo. Employer Ex. #2. The Vehicle Dealer Certificate, which is issued by the Department of Transportation, also reflects the same assumed business name and address. Employer Ex. #1.

## UNIT FACTS

There are approximately 18 technicians working in the two shops. Candidates for service technician positions fill out the same application form, regardless of division. Hiring is processed through the HR department. The final decision for the hiring or firing of all technicians is done by Carlos Martinez. Upon being hired, any new technician is given an orientation, which includes a tour of all facilities. He also receives an Employee handbook, takes a drug screen and is shown a hazard communications video -- all identical for all techs. Either Carlos Martinez or Ralph Martinez must authorize approval for any wage increase.

Each service division has its own first level supervisor. Hal Roach is the service manager for Chrysler and Jerry Allen Hudson II manages the Mitsubishi side division. Each division also has its service advisors, excluded by stipulation. The Chrysler division has three and the Mitsubishi division has two. The advisors write up orders and assign them to the technicians in their division. Hudson and Roach consult with each other on work assignments. Hudson is responsible for training advisors and technicians in both divisions. The task of assigning work across both divisions lies with Hudson, who personally monitors the workload in both divisions so that he can decide when and where to send work. He is also responsible for producing and managing the reports that are generated for both divisions, including tracking reports which are used to track individual productivity for employees in both divisions. These reports are considered at the time all technicians' reviews are conducted, and directly impact their compensation. According to Hudson, he talks with Chrysler technicians at least twice a month regarding their Chrysler complaints, which he then raises at the managers' meetings. There is a single facility-wide safety committee, on which employee representatives of each department, including both service departments, serve.

All technicians work the same hours - 8:00 a.m. to 5:00 p.m., Monday through Friday. Although there are two break rooms, the technicians from the Mitsubishi division use the large break room located in the Chrysler shop, since it is equipped with a coffee machine and cable television. The technicians from both shops take smoke breaks in the common area between the two shops. During the spring and summer months, the Employer holds barbecues in this common area, attended by all employees. The technicians in both shops wear the same blue pants and light blue shirt with the Town and Country logo, and they all park their personal vehicles behind the Chrysler shop.

As noted, all employees have common benefits – 401(k), medical, dental and vision insurance. There is a common wage range for all techs.

The technicians from both shops share some common equipment. Both share the one alignment machine, located on the Chrysler side, on a daily basis. Mitsubishi technicians drive their assigned repair into the Chrysler shop to the alignment rack. Similarly, the "hot tank" used for cleaning engine parts, is in the Mitsubishi shop. Twice daily Chrysler shop techs come over to use it. Engine and transmission stands, kept in a storage area located between the two shops, are shared by both shops as needed. There are three DRB scanners located on the Chrysler side. When a Mitsubishi-side tech needs to use a scanner – a daily occurrence – he will borrow it from the Chrysler side.

Technicians from the Chrysler division have transferred to Mitsubishi. Indeed, of the six technicians currently working at the Mitsubishi shop, two transferred from Chrysler. Bob Irish worked at the Chrysler shop as the Employer's main transmission technician. About 16 months ago, during an industry slowdown, Irish transferred from the Chrysler division over to the Mitsubishi side, to perform heavy line work. According to Hudson's testimony, Chrysler division technicians consult with Irish on a daily basis to discuss transmission issues. On many occasions, Chrysler technicians will bring a car over to the Mitsubishi shop and have Irish look at the readings they're getting off the equipment. Tom Geren is a master technician who transferred from the Chrysler division over to the Mitsubishi shop. Both Geren and Irish received Chrysler training.

Jeffrey McGrew, one of the six technicians working at the *Mitsubishi shop*, is a technician who works on the Employer's entire used care inventory. He works on every line of used car that comes into the Employer's facility, including Mitsubishis, Chryslers and Jeeps. He spends about 95% of his time working on used vehicles, mostly Chrysler products. McGrew's output is about 20% of the Mitsubishi shop total. Other employees in the Mitsubishi shop work on Chrysler vehicles, when there is overflow work from the Chrysler shop. That overflow work accounts for about 2% of the Mitsubishi shop's production. McGrew and Chrysler shop technicians engage in discussions about repair and service work at least seven times a week. Indeed, technicians from both shops engage in job-related discussions, across division lines, on a daily basis.

With regard to training, each major manufacturer (Chrysler-Plymouth and Mitsubishi) offers its own training. Although Chrysler requires that technicians maintain a certain amount of training each year in order to service its vehicles under warranty, the Employer offers training from the National Institute of Automotive Service Excellence (ASE), which can be substituted for official Chrysler training. Used car tech McGrew and Mitsubishi technician Charn Saechao are currently ASE certified. On the other hand, Mitsubishi does not require yearly certification. The Chrysler Apprenticeship program is available to all technicians. In 1995, Saechao participated in this program while working at the Mitsubishi shop.

There are some Chrysler vehicles that require a Mitsubishi computer to perform some services. Mitsubishi and Chrysler vehicles share various components. For example, a Chrysler engine might be used in a Mitsubishi car. Although each manufacturer has some special tools that it requires technicians to use while working on their respective products, technicians all use standard mechanics' tools (varying with their specific specialties).

## **UNIT ANALYSIS**

Section 9(b) of the Act provides that "the Board shall decide in each case whether, to assure to employees fullest freedom in exercising the rights guaranteed by the Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, or subdivision thereof." The statute does not require that a unit for bargaining be the only appropriate unit, or the most appropriate unit. Rather, the Act requires only that the unit be "appropriate," that is, appropriate to insure to employees "the fullest freedom in exercising the rights guaranteed by the Act." *Morand Brothers Beverage Co.*, 91 NLRB 409 (1950), *enfd.* 190 F.2d 576 (7<sup>th</sup> Cir. 1951); *Dinah's Hotel Corporation, d/b/a Dinah's Hotel and Apartments*, 295 NLRB 1100 (1989). A petitioner

gets its choice of unit so long as the unit sought is *an* appropriate unit. *J.C. Penny Co.*, 328 NLRB 766 (1999), citing *National Cash Register Co.*, 166 NLRB 173, 174 (1966); *Dezcon, Inc.*, 295 NLRB 109, 111 (1989).

The Board has enumerated several factors, which it utilizes in determining whether or not a given group of employees share a sufficient community of interest to form an appropriate unit. These factors include: similarity in the scale and manner of determining earnings; similarity in employment benefits, hours of work and other terms and conditions of employment; similarity in the kind of work performed, the qualifications, skills, and training of employees; frequency of contact and interchange among employees; integration of production processes; common supervision and determinations of labor-relations policy; and the history of collective-bargaining. The degree of interchange is also relevant. See, e.g., *Kalamazoo Paper Box Corporation*, 136 NLRB 134 (1962).

Based on the above, I find that the Mitsubishi technicians share such a strong community of interest with the Chrysler technicians that an appropriate tech unit requires their inclusion. Stated alternately, the two shops are not separate and distinct enough that they can constitute separate appropriate units.

The record amply demonstrates that the technician groups share common wage scales, benefits and personnel policies and hours of work. There is a common wage scale for similar work and experience. As discussed above, technician earnings for both shops are calculated from the reports generated by the Mitsubishi service manager. All receive the same 401 (k) medical, dental and vision insurance. They are also subject to the same drug screening and a common employee handbook.

Clearly, the two groups of technicians share similar skills. They are all auto mechanics; moreover, four of the six Mitsubishi technicians have been cross-trained to work on Chrysler products, while the Chrysler technicians can all work on Mitsubishi cars. The Employer, through the ASE program, offers common training, and an apprenticeship program

Similarly, there is ample evidence of contact between these two groups. The shops are only perhaps 200' apart. They share the Chrysler break room and the shared area for smoking. They all park in the same area outside the Chrysler shop. The Mitsubishi technicians use the Chrysler shop's alignment machine on a daily basis, in the Chrysler shop. Similarly, Chrysler technicians are over at the Mitsubishi shop twice a day using the hot tank. Chrysler technicians consult with Mitsubishi technicians on a daily basis in order to discuss mechanical issues. Chrysler technicians often bring their repair vehicle over to the Mitsubishi side for Bob Irish to review.

There is separate first-lead supervision in the two shops, but not entirely so. The Mitsubishi supervisor, Hudson, is responsible for training in both shops, tracks time/production for every tech, and equalizes workloads between the shops.

Human resources for both divisions are handled by Christine Welsh. She is involved in counseling employees, running advertisements for new employees, processing applications, employee discipline and administering employee benefits. All hiring, firing and wage issues are handled at the "owner" level of the corporation. There is a common payroll function.

There is substantial integration of operations, demonstrated by the assignment of work across division lines, shared equipment and facilities, permanent transfers, some degree of common supervision, shared administrative functions, central control of labor relations.

Based principally upon the foregoing, and the record as a whole, I find that the Mitsubishi technicians must be included with the Chrysler technicians in the petitioned for unit.

There are approximately 18 employees in the Unit found appropriate herein.<sup>5</sup>

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the Unit found appropriate, at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the Unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, AFL-CIO, DISTRICT LODGE NO. 24.

### **LIST OF VOTERS**

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, must be filed by the Employer within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The Region shall, in turn, make the list available to all parties to the election.

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<sup>5</sup> I have expanded the unit substantially beyond that petitioned for. There is a sufficient showing of interest to cover the larger unit. Petitioner may withdraw its petition, without prejudice, if such withdrawal is received within 10 days of today's date.

In order to be timely filed, such list must be received in the Portland Subregional Office, 601 SW Second Ave., Suite 1910, Portland, Oregon 97204-3170 on or before July 17, 2002. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (503) 326-3085. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

### **NOTICE POSTING OBLIGATIONS**

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by July 24, 2002. [Because of delays of US Mail directed to US government addresses in D.C., use of alternative delivery modes is strongly suggested.]

**DATED** at Seattle, Washington, this 10th day of July 2002.

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